GOVERNMENT OF ANDHRA PRADESH

ABSTRACT

Infrastructure & Investment Department – Gangavaram Port Limited - Proposal of M/s Adani Ports & Special Economic Zone (APSEZ) to acquire the shares of Gangavaram Port Limited by way of merger – Report of the Empowered Group of Secretaries (EGoS)– Approved - Orders – Issued.

INFRASTRUCTURE & INVESTMENT (PORTS) DEPARTMENT

G.O.Ms.No.12 Dated:23.08.2021

Read the following:

1. G.O.Ms.No.4, I&I (Ports) department dated 25-05-2021
2. G.O.Ms.No.5, I&I (Ports) department dated 04-06-2021
3. Report of the Empowered Group of Secretaries (EGoS)

&&&

ORDER:

The Gangavaram Port which is a Greenfield port developed under PPP mode and after due process the Concession Agreement was entered into between M/s DVS Raju led consortium who was selected as successful bidder by the GoAP with a concession period of 30 years from COD extendable by 2 spells of 10 years each subject to fulfillment of certain conditions by the Concessionaire and also subject to the other conditions mentioned in the Concession Agreement and Shareholders Agreement. The said Concession Agreement provides revenue share to the Government from the income of the port besides receiving of dividend based on the shareholding pattern.

2. In the reference 1st read above, Government have examined the recommendations of Chief Executive Officer, AP Maritime Board on the merger of Gangavaram Port Ltd. and ordered as detailed below:

1) The State Government hereby accept the transfer of shares of 31.50% from Windy Lakeside Investment Ltd. (an affiliate of Warburg Pincus) in Gangavaram Port Limited in favour of APSEZ and acknowledge the Deed of Adherence entered into between APSEZ and the Promoters of Gangavaram Port Ltd. (GPL).
2) The State Government hereby approve the definitive agreement entered between APSEZ and Sri D.V.S. Raju and family to acquire their 58.10% of the shares in GPL.
3) The State Government hereby accept the proposal of merger of GPL with APSEZ with a condition that the transferee company APSEZ shall set up a separate Special Purpose Company (SPC) to enter into a revised concession agreement on the same terms and conditions of the original concession agreement for the remaining concession period.
4) The Government hereby order to constitute an Empowered Group of Secretaries to implement the entire process of disinvestment and merger

duly following the available guidelines and the recommendations of SBICAP on disinvestment.

3. In the reference 2nd read above, Government have issued orders constituting an Empowered Group of Secretaries (EGoS) to implement the entire process of disinvestment and merger of GPL with the APSEZ and the said Empowered Group of Secretaries shall follow the guidelines given below, while implementing the decision of the Government to disinvest its stakes in Gangavaram Port Limited and to allow the merger of GPL with APSEZ:

a) The committee will examine the various issues on the proposal of merger of GPL with APSEZ including creation of Special Purpose Company to enter into a revised Concession Agreement on the same terms and conditions of the original Concession Agreement
b) The Committee may ensure that all the conditions in the present Concession Agreement and Shareholders Agreement are continued without any dilution;
c) The payment obligations to the Government are protected without any interruption;
d) The assets in the project are protected;
e) The rights and interests of the Government in the project are protected;
f) The obligations of the Concessionaire in the project are ensured to be fulfilled;
g) The project is transferred to the Government at the end of the Concession Period;
h) The entire process of disinvestment, merger and formation of separate SPC may be completed within a stipulated time frame, beyond which the Government should have a step in right and substitute a new concessionaire in the SPV.
i) The recommendations of SBICAP may also be examined by the committee and arrive to a specific share value of the Government stake proposed to be transferred to APSEZ, duly following the procedure on disinvestment in case the committee feels that the said transaction is in public interest as indicated in para 16 of the G.O. referred to above.
j) The committee may invite anybody as a Special Invitee to assist the committee in the matter and also get any report from any experts on the subject as and when the committee feels necessary.

4. To assist the EGoS committee, a SEBI registered valuation advisor (KPMG), a legal advisor (JSA Associates) and a Transaction Advisor (Grant Thornton) were engaged for the entire transaction. Besides, SBI-CAPS and Shardul Amarchand Mangaldas (SAM) have been engaged by APMB as Financial and Legal advisors respectively.

5. The EGoS have evaluated the final reports submitted by SBICAPS, Shardul Amarchand Mangaldas (SAM), Grant Thornton (GT), KPMG and J. Sagar Associates (JSA) involved in the transaction. Based on the deliberations and reviews, the following way forward is recommended:

The EGoS have evaluated the reports of all consultants involved in the transaction. All reports/ memorandums received from the advisors/

consultants and opinions are enclosed to the Committee report and may be treated as part and parcel of this Committee report. The Committee recommends that all the suggestions made in the various reports/ memorandums/ opinions may be considered after due legal vetting.

The Committee notes that as a general principle, when any State Government or the Central Government enters into a contract for procurement of goods or services and even for disposal of assets, such contracts need to be entered into following fair and transparent processes. Accordingly, the Committee observes that the open bid process is the preferred option and has the advantage of open price discovery and transparency. However, the reports of the Transaction Advisors (SBI CAP, Grant Thornton), Legal Advisors (Shardul Amarchand Mangaldas, J Sagar Associates) have recommended for the direct sale process due to the circumstances explained in their respective reports. Further, opinion has also been obtained from Hon'ble Justice Dipak Misra who after analyzing has opined as follows:

"Therefore, it can be safely stated that in the facts and circumstances of this case, it is a fit case to fall within the ambit of an exceptional case as indicated by the Supreme Court in a catena of cases and thereby justifies the GoAP's action to adopt a direct sale of its shares in GPL to APSEZ instead of auction sale. This is due to the reason that such a sale is neither discriminatory nor irrational but is rather based on definite concrete data and is backed by some ground research."

Considering the above, the Committee desired that the reports/ memorandums/ opinions of the advisors be communicated to the Learned Advocate General (AG) of Andhra Pradesh for his opinion in the matter.

The Learned Advocate General has opined as follows:

"My opinion has been sought in relation to the proposed sale of Government of Andhra Pradesh shares in the Gangavaram Port Limited. I have gone through the opinions rendered by Justice Dipak Misra, M/s Shardul Amarchand Mangaldas and M/s J Sagar Associates on the position of law in relation to the disinvestment/ sale of shares on the Government. I concur with the opinions rendered by the above mentioned on the position of law and the steps to be undertaken going forward."

In view of the recommendations by SBICAP, Grant Thornton, KPMG and legal advisors Shardul Amarchand Mangaldas (SAM) and J. Sagar Associates, the opinion obtained from Hon'ble Justice Dipak Misra, and the opinion of the Learned Advocate General of Andhra Pradesh, Committee recommends to the Government to consider taking further action for the sale of GoAP's stake in GPL considering Rs 120 per share as a fair price, subject to the same covering the below mentioned points 1 to 9 and any other point that may arise on legal vetting:

1) According to SBICAP recommendations and subsequent concurrence provided by other consultants, sale of GoAP's shares in GPL to APSEZ, should be effected through a Share Purchase Agreement duly

recognizing the right of first refusal provided under Clause 10.4(e) of the SHA:

- No liabilities should be imposed on GoAP under the said share purchase agreement.
- The decisions/ orders of GoAP conveyed vide orders dated May 25, 2021, bearing ref. no. G.O. No. 4 and June 04, 2021, bearing ref. no. G.O. No. 5 are suggested to 'be annexed to and shall form part of the Share Purchase Agreement, and would be binding on the parties'.

2) As per recommendations of the valuation advisors, the enterprise value of GPL has been determined to be Rs 115 per share. The current price offered by APSEZ of Rs. 120 per share is above the value suggested by the Valuation Advisor. Hence the share price of Rs. 120 per share can be deemed as a fair price for the purposes of this transaction.

3) A Special Purpose Company shall be created as per to the order of GoAP G.O.Ms. No. 4 dated May 25, 2021, which shall enter into the role of GPL under the Concession Agreement. The GoAP may, in approving the modalities of implementation, recognize the following and ensure a legally vetted documentation:

- The Special Purpose Company shall be a new company that is not engaged in any other business
- Such special purpose company is entering into the role of GPL under the Concession Agreement pursuant to the above merger scheme and as per to the order of GoAP dated May 25, 2021, bearing ref. no. G.O. No. 4; and
- There will be no dilution of any rights and privileges of GoAP and any of the concessionaire's obligations as available/ applicable in terms of the existing Concession Agreement
- Project must be transferred to the Government at the end of the concession Period as per the existing Concession Agreement
- The Transfer of all port assets, including all land, including an extent of 1,800 acres given earlier and 1,086 acres of additional land given on lease basis shall be transferred back to the Government, free of all encumbrances and liabilities, at the end of concession period, as per the existing Concession Agreement.

4) The decisions/ orders of GoAP conveyed vide orders dated May 25, 2021, bearing ref. no. G.O. No. 4 and June 04, 2021, bearing ref. no. G.O. No. 5 be annexed to and form part of the share purchase agreement and the other tripartite / bilateral agreements required for the transactions and be made binding on all the parties, irrespective of the method of divestment adopted to ensure divestment, merger and formation of a separate SPC.

5) As APSEZ has entered into Definitive Agreement with the promoters, DVS Raju and Others, it is entering into the role of promoters. Accordingly, an undertaking is required to be furnished by APSEZ to which the SPC shall also be a party, confirming the requirements of GoAP as per GO MS No 4 and GO MS No 5, including, but not limited to, the following:

a. Continuity of all the conditions in the present Concession Agreement and shareholders Agreement are continued without any dilution; (with the exception of rights under the SHA that were pertinent to GoAP only in their capacity as shareholders of the Concessionaire)
b. Payment obligations to the Government are protected without any interruption.
c. Assets in the project are protected.
d. Rights and interests of the Government in the project are protected.
e. All obligations of the Concessionaire in the project are ensured to be fulfilled.
f. Project must be transferred to the Government at the end of the concession Period as per the existing Concession Agreement.
g. The Transfer of all port assets, including all land, to an extent of 1,800 acres given earlier and 1,086 acres of additional land given on lease basis shall be transferred back to the Government, free of all encumbrances and liabilities, at the end of concession period, as per the existing Concession Agreement.
h. Entire process of disinvestment, merger and formation of SPC to be completed in a time bound manner
i. All the assets and liabilities of on the appointed date GPL will be transferred to the SPC.
j. In addition to the above, GoAP shall ensure to stipulate additional undertakings to be accepted by the new promoter once the GoAP's stake is divested, which shall safeguard the interests of GoAP.

6) Draft share purchase agreement between GoAP and APSEZ, which has been annexed to the report of the EGoS, shall be executed.

7) A step plan for the implementation of the divestment / merger and subsequent slump sale process covering the entire closing has been prepared by the legal consultants SAM and JSA, which is annexed to the report of the EGoS, shall be executed.

8) The Bank Guarantee from GPL, in its current shape and form, will continue until the approval of the merger and until furnishing of a Bank Guarantee by the SPC.

9) To take Disclosures/Undertakings from APSEZ, DVS Raju and Others and Windy Lakeside Investment Group to the effect that there are no other agreements or consideration by them directly or indirectly through any other entity apart from the share sale/definitive agreement submitted to GoAP in regard to this transaction.

6. The Advocate General (AG) of Andhra Pradesh has concurred with the opinions offered by Justice Dipak Misra, M/s. Shardul Amarchand Mangaldas and M/s. J. Sagar Associates on the position of law in relation to the disinvestment /sale of shares of the Government and the steps to be undertaken going forward.

7. Government after careful examination of the matter, hereby accord approval of the report and recommendations by the EGoS constituted vide G.O. Ms. No. 5 Dated 04.06.2021, to implement the decision of the Government to disinvest its stakes in Gangavaram Port and allow the merger of GPL with APSEZ.

8. The Chief Executive Officer, AP Maritime Board shall take necessary action under intimation to the Government.

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF ANDHRA PRADESH)

R. KARIKAL VALVEN
SPECIAL CHIEF SECRETARY TO GOVERNMENT

To
The Commissioner, Printing, Stationery & Stores Purchase, Andhra Pradesh, Vijayawada
The Chief Executive Officer, APMB, Kakinada.
M/s. Chief Financial Officer, Adani Ports & Special Economic Zone Limited,
(through CEO, APMB, Kakinada)
The Chief Executive Officer, Gangavaram Port Limited, Visakhapatnam.
The Port Officer, Kakinada
Copy to:
The OSD to Secretary to Hon'ble CM
The OSD to Hon'ble M(I&I)
The Finance (Exp.FMU-IIEIC) Department
The GA(Cabinet) Dept.,
The V.C&MD, APIIC.
The PS to Spl.C.S., I&I Department.
Sf/sc(INI01-PORT/36/2021)

// FORWARDED :: BY ORDER //

SECTION OFFICER